



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

DAVID KENT FITCH,
Petitioner,

vs.

MARY M. MITCHELL, Warden,
Respondent.

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CIVIL ACTION NO. 9:10-0952-HFF-BM

ORDER

This case was filed as a 28 U.S.C. § 2241 action. Petitioner is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that the Petition be dismissed without prejudice and without issuance and service of process upon Respondent. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on April 27, 2010, and the Clerk of Court entered Petitioner's objections to the Report on June 4, 2010. The Court has carefully considered

Petitioner's sixty-two page submission, but finds his objections to be without merit. Therefore, the Court will enter judgment accordingly.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Petitioner's objections, adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that the Petition is **DISMISSED** without prejudice and without issuance and service of process upon Respondent.

To the extent that Petitioner requests a certificate of appealability from this Court, that certificate is **DENIED**.

IT IS SO ORDERED.

Signed this 7th day of July, 2010, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within sixty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.